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In The

Supreme Court of the United States

October Term, 1992

ANTHONY T. LEE, *et al.*,

Petitioners,

v.

TALLADEGA COUNTY BOARD OF EDUCATION, *et al.*,

and

UNITED STATES OF AMERICA,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSTION

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QUESTIONS PRESENTED

Petitioners' statement of the issue incorrectly implies that the Court of Appeals affirmed the District Court's refusal to reopen this case based on the mere term "unitary status", instead of a careful and reasoned review of the underlying case itself.

No issue arises under this Court's holding in *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. ___, 112 L.Ed.2d 715, 111 S.Ct. 630 (1991). That case held that dismissal of a desegregation case is appropriate, along with dissolution of the desegregation decrees which were entered, upon a finding that a school board has ". . . complied in good faith with the desegregation decree since it was entered, and [that] the vestiges of past discrimination [have] been eliminated to the extent practicable." 112 L.Ed.2d at 729.

Because the plaintiffs *consented* to such a finding in this case, and the Court of Appeals affirmed on that basis, no issue arises under *Dowell*, a case in which unitary status and dismissal was contested.

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STATEMENT OF THE CASE

Misstatements Of Fact And Law:

In their statement of the case, the plaintiffs incorrectly say that the facts of this case are "virtually indistinguishable from those in *Dowell*". But in *Dowell* dissolution of the decree was contested, 112 L.Ed.2d at 723, whereas here the plaintiffs *consented* to a joint stipulation for dismissal in 1985 which said "it is agreed by all parties that these orders have been implemented in a manner that is adequate for establishment of a unitary school system in Talladega County." (App. 24a, Pet. for Cert.)

Petitioners' statement of the case also incorrectly implies that the Court of Appeals affirmed the District Court's 1988 refusal to reopen the case simply because the 1985 dismissal used the term "unitary". In fact the Court of Appeals conducted a thorough review of all the 1985 settlement documents, including the joint stipulation of dismissal, the school board's resolution, and the District Court's 1988 order refusing to reopen the case. *Lee v. Talladega County Board of Education*, 963 F.2d 1426, 1430-32 (11th Cir. 1992). In footnote 3 of its opinion, the Court of Appeals said:

> "In light of the parties' stipulation in 1985, upon which the district court relied, that the TCBE 'has complied in good faith' with all court orders and that 'there is not . . . any vestige of racial segregation remaining in the Talladega County System,' we find no ambiguity in the district court's use of the term 'unitary status.' ".

The Court of Appeals went on to note that

> " . . . the documents state repeatedly and explicitly that the time has arrived for this case to end.

> Indeed, the resolution was adopted in support of the TCBE's motion 'asking the Court to enter an order *relinquishing jurisdiction and control* over the operation of the school system'. [emphasis in original] The sense of finality in the resolution is inconsistent with the notion that a party would enjoy the right to petition the Court years later to enforce earlier court orders."

963 F.2d at 1432.

Petitioners attempt to buttress their claims here with selected excerpts from *Elston v. Talladega County Board of Education*, No. CV-88-H-2052-E (N.D. Ala.) [Petition, p.7, footnote 7, and App. 34a-36a]. However, Petitioners' footnote 7 and the excerpts from *Elston* which they have included in their appendix seriously misstate the District Court's findings in that case, which are reproduced fully in Respondents' Appendix here.

In summary, the District Court in *Elston* found that the Talladega County Board of Education was acting in compliance with the law, has " . . .moved forward to improve the quality of education offered to all of its students since March 13, 1985" and " . . . articulated and established by clear and convincing evidence substantial, legitimate, non-discriminatory reasons for the decisions and practices in question." (App. A-18 and A-21). Thus Petitioners' claim that the trial court in *Elston* denied them relief for a "clear violation of the court order" is a serious misstatement of the trial court's findings of fact and conclusions of law.

SUMMARY OF ARGUMENT

The plaintiffs and Petitioners here consented to dismissal of the Talladega County Board of Education from this case in 1985, executing a Joint Stipulation For Dismissal which said

> "The parties have reviewed the Motion of the Talladega County School System and its operation under the orders entered in this case. It is agreed by all parties that these orders have been implemented in a manner that is adequate for establishment of a unitary school system in Talladega County.
>
> In view of this agreement and in view of the attached resolution, the parties conclude that dismissal of this cause of action, as it applies to the Talladega County School System, is appropriate at this time."
>
> Appendix to Petition, p. 24a.

With this express acknowledgement by the plaintiffs that the Board was due to be dismissed, it is hardly surprising that the District Court refused to "reopen" the case in 1988. Had there been any "vestige of past discrimination" remaining in the Talladega County School System at the time it was dismissed in 1985, it is certainly reasonable to suppose that the plaintiffs would have brought that to the attention of the Court *then*, and refused to consent to the Board's dismissal. The absence of any such complaints *at the time* should be conclusive on the issue of whether the Board was entitled to be dismissed from the case in 1985.

No issue in this case arises under *Dowell,* which arose from the contested dismissal of a school board where the order dismissing the case was not clearly final. In this case however, it was clear to all parties at the time, including the plaintiffs, that the Board was being dismissed, and the Court of Appeals so found. (" . . . neither the resolution nor the stipulation mentions anything about a party returning to court to enforce the court orders. To the contrary, the documents sate repeatedly and explicitly that the time has arrived for this case to end.) 963 F.2d at 1432.

There is no error in the ruling below and the petition for certiorari should be denied.

ARGUMENT

When does a desegregation case end? This Court gave the answer in *Dowell:*

> "Dissolving a desegregation decree after the local authorities have operated in compliance with it for a reasonable period of time properly recognizes that 'necessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems not extend beyond the time required to remedy the effects of past intentional discrimination.' " [citing *Milliken v. Bradley,* 433 U.S. 267, 280-82 (1977)]
>
> "The District Court should address itself to whether the Board had complied in good faith

> with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable."
>
> 112 L.Ed.2d at 729.

As the Court of Appeals noted in footnote 3 of its opinion, 963 F.2d at 1430, the plaintiffs and petitioners here acknowledged and stipulated in 1985 that the Talladega County Board of Education *had* complied in good faith with all court orders and that there was no vestige of segregation remaining in the Talladega County System.

Seeking to avoid the effect of this holding, Petitioners claim in footnote 14 of their petition (Petition p. 13) that this was "a statement only of the school board's position". But one may rightfully ask, if there *was* any vestige of segregation or discrimination remaining in the Talladega County System at the time of the 1985 consent dismissal, why did the plaintiffs consent, and why was that "vestige" not brought to the attention of the district court *at the time*? Moreover, if there was any such vestige of discrimination or segregation, why on earth would the plaintiffs have allowed a resolution stating that no such vestige did exist to be attached to their *joint* stipulation for dismissal?

The district court's 1988 refusal to reopen this case and its treatment of the 1985 dismissal was perfectly consistent with this Court's opinion in *Dowell*. The 1985 dismissal was a clear acknowledgement by all parties – school board, plaintiffs and the United States – that the case was *over*. As the District Court remarked in its July 25, 1988 memorandum opinion refusing to reopen the case,

> "The predominant motive for the parties having sought and obtained the order which was entered by this court on March 15, 1985 was the parties' recognition of the jurisprudential principle that litigation, even including permanent injunctions with ostensibly unending reporting requirements, must eventually come to an end. On March 15, 1985 this Court formally dismissed this action, by consent of the parties, as against Talladega County Board of Education. The finding under Rule 54(b) . . . was a redundancy, but made it perfectly clear, if it were not already clear, that this case was in all respects concluded as to Talladega County Board of Education . . .
>
> . . . The whole point of the dismissal of March 15, 1985 was to require that any party who found the dismissal erroneous do something about it *then*. . . . After March 15, 1985, any violation of statutory or constitutional law by Talladega County Board of Education became the subject of a new and separate complaint."
>
> Appendix to Petition, pp. 17a-18a.

The thrust of this holding by the district court in 1988 is remarkably consistent with this Court's 1991 holding in *Dowell* that, if a Board is entitled to have the decree terminated as the result of past good faith compliance and elimination of vestiges of past discrimination, then subsequent actions must be evaluated under appropriate equal protection principles. 112 L.Ed.2d at 729-730.

It is clear that what the plaintiffs are actually seeking is to avoid the burden of proof on the issue of intentional discrimination which they would have in a new action.

Justice Scalia anticipated this question in *Freeman v. Pitts*, 503 U.S. ___, 118 L.Ed.2d 108 (1992), when he said

> "We must soon revert to the ordinary principles of our law, of our democratic heritage, and of our educational tradition: That plaintiffs alleging Equal Protection violations must prove intent and causation and not merely the existence of racial disparity, . . . that public schooling, even in the South, should be controlled by locally elected authorities acting in conjunction with parents, . . . and that it is 'desirable' to permit pupils to attend schools nearest their homes."
>
> 118 L.Ed.2d at 144 (citations omitted).

In this particular case the Court of Appeals held that the plaintiffs themselves had acknowledged this time had come, because they acknowledged in 1985 that the Talladega County Board of Education had done all it could do to eliminate vestiges of past discrimination. 963 F.2d at 1432, 1433.

In footnote 7 of their petition (p. 7) the Petitioners claim that they have " . . . been stripped of their right to enforce valid orders which they obtained in the *Lee* litigation . . . ". But this claim is simply another way of attempting to avoid *Dowell's* refusal to subject school systems to " . . . judicial tutelage for the indefinite future". (112 L.Ed.2d at 729).

The Petitioners grudgingly acknowledge *Dowell's* holding that dissolution of the underlying injunctive decrees is justified once a school district has met its constitutional obligation to eliminate the vestiges of de jure segregation. Petition p.12 citing *Dowell* at 111 S.Ct.

638. In spite of this, the Petitioners stubbornly refuse to acknowledge that they consented in 1985 to a finding that the Talladega County Board of Education had in fact met its constitutional obligation. They should not now be permitted to repudiate that acknowledgement and consent dismissal.

Finally, the Petitioners *claim* that the Court of Appeals' ruling " . . . will affect numerous desegregation cases" still pending in the Eleventh Circuit. But they make no showing whatsoever that any of those cases are factually similar to this, i.e., that they involve cases where the plaintiffs *consented* to a finding of unitary status and dismissal of the particular school board. Accordingly, this claim should also be rejected by this Court because it is unsupported by any factual showing from the Petitioners.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

QUINTIN ELSTON, ET AL., PLAINTIFFS, VS. TALLADEGA COUNTY BOARD OF EDUCATION, ET AL., DEFENDANTS.	)	CV88-H-2052-E (Filed Sep 19, 1989)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action was tried before the court, without the aid of a jury, on August 21, 22 and 23, 1989. The matter is now under submission and the court herein sets forth its findings of fact and conclusions of law. Pursuant to the Pretrial Order, counsel for the parties filed with the court on August 11, 1989 a statement of agreed and disputed facts. The court's findings of fact and conclusions of law are basically addressed to the proposed facts contained in that document in the order and under the headings set forth therein.

Stipulated Facts

In 54 separately numbered paragraphs the parties stipulated a number of facts and each of those stipulated facts are accepted by the court as facts for the purposes of this action. The court does, however, note that at least

one of those stipulated facts may not be correct but any error is relatively immaterial. In paragraph 13 of the stipulated facts, counsel stipulated that defendants' plan for the students currently residing in Jonesview and Talladega County Training School zones to attend Talladega County Training School for grades 7 through 12. Defendant Lance Grissett has such plan and will recommend such to the Board of Education but the Board of Education has not formally approved such plan.

Plaintiffs' proposed factual findings

In 44 separately numbered paragraphs counsel for plaintiffs presented to the court proposed factual findings. The court will now set forth, using the same paragraph numbers, some of its findings of fact and conclusions of law germane to each proposed factual finding. The failure to include the language or the "facts" as proposed by counsel for plaintiffs could generally be viewed as a determination by the court that the proposed language or "facts" have not been established or are embraced in other findings or conclusions found elsewhere in this document.

1. Defendants plan to discontinue grades K-6 at Jonesview (an historically white school) and at Talladega County Training School (an historically black school) and to relocate those grades at the site of the former Idalia School (which burned in 1986) in a new school building which will house grades K-6 from the three school zones.

2. Black parents have contributed significant time and financial resources to support and enhance the

Talladega County Training School. Despite these contributions and the expenditures by the Board of Education for maintenance and improvements over the years, the Training School, like other schools in the system, has generally deteriorated. A renovation and rebuilding program has been underway for several years and Talladega County Training School is slated for substantial renovation in the immediate future. Several historically white schools are not as far along as Talladega County Training School in the renovation plans.

3. Assignment of all students from the new school to the Talladega County Training School for grades 7-12 would add about 135 white students to the Training School which would significantly improve integration at the Training School. About 55 of those students would come from Jonesview Elementary School zone and approximately 80 would be supplied by Idalia Elementary School zone. While it seems clear the Jonesview students will be so assigned, the Board has not made a decision as to where the Idalia students will be assigned.

4. Although the Board has never formally voted to close the elementary section of the Talladega County Training School or voted to close Jonesview Elementary school, when the Board approved the construction of the new 500 pupil school to be known as Stemley Bridge Road Elementary, implicit in that decision was the closure of Jonesview and the elimination of elementary grades at the Talladega County Training School.

5. The Talladega County Board of Education has not finalized where students attending the new school who currently live in the Idalia School zone will go for grades

7-12, but the Superintendent presently intends to recommend that many of them attend Drew Middle School for grades 7-8 and Lincoln High School for grades 9-12 which are the schools those students have historically been zoned to attend.

6. Defendants plan to renovate the Talladega County Training School for use as a 7-12 facility. As of June 1988, the estimated expenditure on renovation for the Training School was $500,000.

7. The construction of a new school at the site adjacent to the Idalia School, originally estimated to cost about $1,200,000, later estimated to cost $1,800,000, is now anticipated by defendants to cost almost $2,600,000.

8. The plan to renovate all buildings at the Training School for use in the operation of a grades 7-12 school would cost essentially the same whether the new elementary school is located there or elsewhere. The cost of construction of a new school building containing about 53,000 gross square feet for use as a K-6 grade school for about 550 students would be approximately the same whether constructed at the Idalia or at the Talladega County Training School site.

9. In 1988 the Board relocated the Phyllis Wheatley Middle School, which historically was a black school, to a new facility about a mile from its former site. Although its name was changed to Childersburg Middle School, its attendance zones, faculty and bus routes did not change. The composition of the student body remained the same.

10. Some black parents, including Mr. Charles Woods (a local leader), objected to moving the Wheatley

School to the new location and changing the name. Mr. Woods believed the plan was racially motivated and part of a pattern of closing historically black schools. He asked to be allowed to meet with the Talladega County Board of Education to express his opposition to the moving of Phyllis Wheatley but was not successful in arranging such a meeting.

11. Under the terms of a resolution adopted November 22, 1983 by the Talladega County Board of Education and filed in this court in *Lee v. Macon County* prior to the March 13, 1985 "unitary" order, the Board committed itself to maintaining a unitary, nondiscriminatory school system. There is no evidence that it has violated this commitment since March 13, 1985; and the court is satisfied that the Board's actions and decisions challenged in this suit do not violate that commitment.

12. Prior to the March 13, 1985 order (a) determining that the Talladega County School System had attained unitary status and (b) dismissing the Talladega County Board of Education from the *Lee v. Macon County* litigation, the Board decided to close Hannah Mallory Elementary School, a 100% black school with grades K-6, at the end of the school year 1984-85. A formal "closure" resolution was adopted in the summer of 1985.

13. When the Hannah Mallory School was closed after the 1984-85 school year, the Hannah Mallory attendance zone was divided among three attendance zones primarily on a proximity basis. Prior to the March 13, 1985 unitary order, defendants had submitted to the Department of Justice the proposed closing of Hannah Mallory and the anticipated distribution of its students as

actually distributed. The plan envisioned assigning the 132 black students at Hannah Mallory as follows: 26 – Childersburg; 26 – Jonesview; 80 – Talladega County Training School. Childersburg zone, Jonesview zone and Talladega County Training zone all received the Hannah Mallory students, all of whom were black.

14. As a result of the zoning changes made in 1985 when Hannah Mallory was closed, about 132 black students were reassigned to the three zones earlier mentioned. The following school year, as a result of a combination of those assignments and natural or normal enrollment fluctuations, black student enrollments in grades K-6 in the three receiving school districts increased as follows: Jonesview went from 85 to 116; Childersburg went from 134 to 147; and Talladega County Training went from 134 to 236.

15. This increase crowded the facilities at the Training School and required the use of some portable classrooms. Disbursement of the Hannah Mallory students among the three receiving zones promoted integration in the Childersburg zone, adversely affected integration in the Jonesview zone and had no significant effect on integration at Talladega County Training School. The increased concentration of black students at the Training School makes it more difficult to desegregate the Training School, but the planned new school will dramatically improve the black-white ratio for the students who currently attend grades K-6 at the Training School. Those students currently are in an environment which is 99% black and will be in an environment that is 70-75% black.

16. This proposed fact has not been established.

17. This proposed fact has not been established.

18. The additional K-6 zone that was created for the Training School following the closure of Hannah Mallory is not contiguous with the original Training School K-6 zone and in this respect it is unique; but the K-6 zone is contiguous to a then existing Training School 7-12 zone.

19. There is property adjacent to the Talladega County Training School which if acquired by gift, purchase or condemnation, would have been suitable for expansion. This includes property owned by members of the Dumas family and the Lawson family. A minimum of 15 acres were needed for the new school and the Board ultimately was able to acquire for the new school 48 acres at the Idalia site in October of 1987.

20. Inquiries in the spring of 1988 made to a representative of the Dumas property owners by the principal of the Talladega County Training School, Mr. John Stamps, caused Mr. Stamps to conclude and to report that the Dumas owners after resolving a boundary line problem with the Board, might be receptive to offers to purchase or swap land and might even donate some property to the school. The Dumas representative seemed particularly concerned that a portion of their land might be across the road and was being used by the school as school land. All of this took place *after* the Board of Education had acquired a 48 acre site at Idalia and made the decision to build the new school at the Idalia site and also after including funds for construction of the new school in the bond issue authorized December 1, 1987.

21. In 1988, Mr. Stamps inquired of a representative of the Lawson family whether it would consider the sale of about 6 acres of property adjacent to the school. This was adjacent to the football field and was not a suitable site for a new school facility. The representative reported that if absolutely necessary, the family might consider a sale. This conversation also took place after the Board had acquired the 48-acre site at Idalia.

22. There is no evidence that the Board sought opinions from parents, black or white, of students to be affected by the decision to create a single large elementary school to serve the Jonesview, Talladega County Training and Idalia zones. Board meetings, however, have been open to all parents and interested persons. The Board sets aside a portion of each meeting to receive comments, complaints, etc., from members of the public in attendance.

23. On January 21, 1988, Mr. Augustus Elston wrote Superintendent Grissett noting that concerned parents with children in attendance at Talladega County Training High School were requesting permission to be heard at the next meeting of the Talladega County Board of Education. The letter stated that "[t]here are many items of grave concern that we need to discuss." This letter was also sent to the other Board members. The next day the Superintendent of the Board wrote to Elston, referring him to Principal Stamps and saying he (the Superintendent) would be glad to meet with Mr. Elson, if necessary. This letter was followed up by a telephone call from Principal Stamps to Mr. Elston.

24. On January 27, 1988, Mr. Elston again wrote to Dr. Grissett requesting that concerned parents of Talladega County Training High School be allowed the opportunity to be heard at the next Board meeting. The letter requested that if the parents were not following the proper channels to get on the agenda, that they be informed of the correct procedure. Copies were sent to the other Board members. No response to this letter was made by any Board member or Dr. Grissett.

25. On February 9, 1989, Mr. Elston wrote to Dr. Morris, Chairman of the Talladega County Board of Education, complaining about an atmosphere of racism and racially prejudiced occurrences, and expressed concern that the Training School had been marked for closure and been excluded from recent planning for facility improvements. Four days later the Chairman of the Board of Education responded, specifically referring to the Talladega City Training School concerns and welcoming them to a Board meeting to voice any concern. Mr. Elston attended the next Board meeting but when the time set aside to receive public comments arrived, Mr. Elston did not speak up. Mr. Elston explains this silence by his belief that it was too late in the meeting for the Board properly to consider his concerns.

26. This proposed fact has not been established.

27. On June 23, 1988, the Board, through its counsel, informed counsel for some of the plaintiffs in writing that the new school would accommodate students currently enrolled in the Idalia School and the "surrounding area" and that the attendance zone for the new school "could"

include students from Lincoln Elementary and the Training School. The Board, through its counsel, reported that it had no plans to change the use of the Jonesview Elementary School. No evidence was presented to the court which sheds light on this incorrect information in such correspondence.

28. With respect to the May 1988 request for state facilities surveys referenced in paragraph 35 of the Stipulated Facts, the Board, through its counsel, informed counsel for plaintiffs that when the Board received the facilities reports, a copy would be made available.

29. This proposed fact has not been established.

30. Significant numbers of white students who reside within the Talladega County Training School zone attend public schools in the Talladega City School system. This has occurred for many years and occurred long before the March 13, 1985 "unitary" order.

31. Dr. Grissett has not contacted school officials of the Talladega City School system in an effort to stop it from accepting into its system children who reside in the Talladega County Training School zone.

32. This proposed fact has not been established.

33. On April 19, 1979, the Justice Department notified counsel who represented both the Talladega City Board of Education and the Talladega County Board of Education that the Talladega City School system was governed by a provision in its school desegregation order that it should not consent to transfers where the cumulative effect would reduce desegregation in either district.

34. As required by state law, defendants have transferred school records of students leaving the Talladega County School system after they have enrolled in the Talladega City School system.

35. The Talladega County School system does not have a written policy regarding verification of residences of students seeking to enroll in County schools. It does seek to verify the residences of students in its system transferring to another school in its system.

36. Defendants are aware of zone-jumping by white and black students alike. Many of the white students are likely avoiding historically black Talladega County Training School. One of the objectives in building the new Stemley Bridge Road Elementary School was to discourage such zone-jumping; another of such objectives was to foster and promote integration of children in the three affected zones.

37. This proposed fact has not been established.

38. If there is any significant zone-jumping *within* the County system by students avoiding the Training School, no evidence sufficient to reach that conclusion has been presented.

39. The Board of Education provides transportation to students who attend school in the County system and it is possible for some students to use that transportation to attend an incorrect school.

40. The Talladega County Board of Education may have received an inquiry in 1984 by the Justice Department regarding possible zone-jumping by students avoiding historically black Hannah Mallory School and the

Talladega County Training School. The extent of any such zone-jumping in 1984 is not known.

41. About ten years ago, when a portion of the Talladega County school district was sought to be annexed by a school system in another county, the Board took steps in *Lee v. Macon County* to stop the annexation. The area sought to be annexed contained mostly white students and both the school systems involved were under court ordered integration. The Board has taken few, if any, steps to stop the loss of white students to the separate school systems operated by the City of Talladega or the City of Sylacauga from predominately and historically black Talladega County Training School.

42. The Talladega County Board's policy authorized majority-to-minority transfers.

43. The Talladega County Board has not advertized [sic] the availability of the majority-to-minority transfer option.

44. One of the members of the Talladega County Board was recently asked and did not know what a majority-to-minority transfer is.

Facts to be offered by proffer

The document filed August 11, 1989 contain 10 paragraphs setting forth "facts" which counsel contemplated would be offered to the court by a proffer. No proffer was made during the trial and that section of the August 11, 1989 document will not be addressed by the court.

Defendants' proposed factual findings

In 24 separately numbered paragraphs counsel for defendants presented to the court proposed factual findings. The court will now set forth, using the same paragraph numbers, some of its findings of fact and conclusions of law germane to each proposed factual finding. The failure to include the language or the "facts" as proposed by counsel for defendants could generally be viewed as a determination by the court that the proposed language or "facts" have not been established or are embraced in other findings or conclusions found elsewhere in this document.

1. Plaintiffs have failed to establish their entitlement to prevail or obtain relief under any of the claims they have made in their complaint.

2. There has been no significant or material change in the percentage of white and non-white students attending schools operated by the Talladega County Board of Education during the past 15 years.

3. The Talladega County schools were under the supervision of the United States District Court from 1970 until March 13, 1985.

4. The Talladega County Board of Education was dismissed from the *Lee v. Macon County* litigation on March 13, 1985 by consent, the court expressly concluding that the system had achieved a unitary status.

5. The closing of Jonesview School, the elimination of grades K-6 at Talladega County Training School, and the consolidation of all those students with students in

the Idalia zone at a new facility under construction adjacent to and on the north side of the old Idalia site is consistent with the operation of a unitary, racially nondiscriminatory public school system. The anticipated zones for the students when they reach grades 7-12 are also consistent with such an operation.

6. The decision to build the new Stemley Bridge Road Elementary School now under construction has not been shown to have been racially motivated. Its construction will provide better educational opportunities for all of the children it serves. Construction of the new Stemley Bridge School will enhance desegregation of grades K-6 at the present Talladega County Training School, since it will take students who are now in an environment about 99% black and change that ratio to about 70-75% black.

7. The Board was reasonable in assuming that the Lawson family which owns much of the land around the present site of the Talladega County Training School likely would not sell land to the Board. At one point in the past, the patriarch of the family is reputed to have told a former Board member that he would "freeze in hell" before he would sell another piece of land to the County. Regardless of whether land might have been available at the Talladega County Training School site, the Board made a sound decision from an educational viewpoint not to locate the new elementary school at the site of a middle school/high school. This decision did not have a racially discriminatory animus and did not have a disparate impact on blacks.

8. The plaintiffs have not shown that the location of the new Stemley Bridge Road School was racially motivated or effected a disparate impact on blacks.

9. Talladega County Training School is not scheduled for closing, but is scheduled for substantial renovation and upgrading so that it may serve as an expanded grades 7-12 school. The capital outlay for the improvements will equal or exceed $500,000.

10. The Talladega Board of Education neither "allows" nor "condones" out-of-zone attendance, or "zone-jumping" by a child residing within its system but attending a public school outside its system. The Board has a significant financial interest in discouraging such zone-jumping. The Board also has a general policy against a child zoned for one of its schools attending one of the Board's schools out of his/her zone, but it has two reasonable exceptions to this policy, viz., children of employees of the Board may attend in the zone of a parent's employment and children in need of special education may attend out-of-zone. No evidence even suggests that these exceptions are abused or applied along racial lines, and it is clear the Board takes steps calculated to assure that a child in its system attends the proper school. Talladega County School personnel have been aware for quite some time that students of both races, but primarily white students, who are zoned for Talladega County schools such as Talladega County Training School are attending schools in the Talladega City system and the Sylacauga City system. Talladega County school personnel are, as a practical matter, unable to prevent this, since the enrollment and attendance of a public school student is verified and determined by the gaining school system (i.e., the city school system) and not by the losing school system (in this case, Talladega County). Talladega County loses approximately $2,000 to $3,000 (depending

upon the year) of state education money per child per year for every "county" student who attends a "city" system school.

11. Talladega County school personnel have previously attempted to bring the problem discussed in paragraph 10 above to the attention of the Federal Bureau of Investigation and the United States Justice Department, but nothing has happened.

12. Only one historically black school (Hannah Mallory) has been closed since 1970. One historically white school (Eastoboga) has also been closed during that period and another historically white school (Jonesview) is currently in the process of being closed.

13. At the end of the 1987-88 school year, the Phyllis Wheatley School, with the support of some members of the local black community and over the objections of other members of the local black community, was relocated to a new site about one mile away. The relocation of Phyllis Wheatley School did not change the bus route, faculty, or student composition in any way. The name of the school was changed to Childersburg Middle School.

14. In 1985 Hannah Mallory was the only remaining one-race school in Talladega County. It had been allowed to remain that way during the entire time the school system was operating under its *Lee v. Macon County* integration order primarily because of the school's geographical location and the difficulty of integrating it.

15. The trend in modern public education is to consolidate smaller "neighborhood" schools into larger ones with more diverse student bodies and better facilities.

The new Stemley Bridge Road School is in line with this trend, and it will make modern, up-to-date facilities available to a large number of children in grades K-6. Its student body will be 70-75% black.

16. There were two principal logistical problems with locating the new larger elementary school at the site of Talladega County Training School: (1) adequate land consisting of a minimum of 15 acres was not readily available, and (2) the Board needed the existing space at Talladega County Training School embracing about 55,000 square feet for its planned upgrade of that school and the enhanced grades 7-12 program it now has planned. The Board also had a strong desire not to locate the large, consolidated elementary school at the site of a middle school or a high school.

17. The new Talladega County Training School building program will include an up-to-date library, a media center embracing a computer lab, and the addition of adequate science laboratory space. It will also include greatly expanded home economics and industrial arts programs and facilities. The remodeling program also includes substantial physical improvements, such as re-wiring, re-lighting, replacement of all windows and doors, etc.

18. By expanding and upgrading the facilities at Talladega County Training School to enhance the education offered to grades 7-12 there, the Board hopes to be able to improve its course offerings and attract and retain more white students to improve racial balance at Talladega County Training School. Regardless of how effective this upgrade is in attracting more students to that

school who are now going to private schools or to adjoining public systems, the planned renovation at Talladega County Training School will unquestionably improve the quality of education for students now attending there.

19. The Talladega County Board of Education has moved forward to improve the quality of education offered to all of its students since March 13, 1985. In so doing there is no evidence which can support a conclusion that race impermissibly was considered in the decision-making process. There was no discriminatory animus behind the plans and decisions challenged in this case and it is clear that the challenged plans and decisions have had no disparate impact on blacks.

20. It is clear to the court that over the years the Board has delayed providing to the public, black and white alike, information with regard to developments under consideration by the Board, but there is no evidence that this has been done in a racially discriminatory manner or with a racial animus. The Board has not refused to receive comments or input from plaintiffs at Board meetings or otherwise.

21. Mr. Elston wrote a total of three or four letters to Talladega County school personnel, but all of those letters were vague and he never made any follow up about what his "concerns" were. In all but one instance the Board properly responded to such letters. The court is particularly impressed with the restrained response (Plaintiffs' Exhibit 4) to one of such letters (Plaintiffs' Exhibit 5). Neither Mr. Elston nor any other plaintiff who attended a Board meeting asked to speak to the Board meeting about

any of the "concerns" which they have raised in the complaint.

22. The extent of the "zone-jumping" in which Talladega County students are attending Talladega City or Sylacauga City schools is not known, but it involves a significant number of students, most of which are white but some of which are black. Any such jumping does not appear to have changed significantly over the years the racial composition of the students in the Talladega County system or the Talladega City system. Talladega County system enrollment has remained about constant at 43% black and Talladega City system enrollment has moved in recent years from 40% black to 43% black notwithstanding the City's receipt of students who reside outside the City. Many of the students who are or have been attending Sylacauga City Schools have done so under "temporary guardianship" or similar court orders which could well have been devices to permit their attendance at Sylacauga City Schools. There is no evidence that the orders are fake and it seems that each such order was signed by a state court judge with appropriate jurisdiction. With regard to each of these "receiving" systems, the Talladega County Board has few, if any, avenues available to it to stop this drain from its system other than to discourage it by improvements to its system, such as the improvements out of which this suit arose. Certainly it is clear that the Board would like to stop the zone-jumping. The Board is in no way intending to discriminate against plaintiffs on the basis of race or to deny plaintiffs equal protection by not being more "creative" in finding a way to prevent such zone-jumping.

23. The Talladega County School System has not "notified parents of children going out of zone" to another public school system that their actions are improper. Defendants' view that it has no legal right or duty to do so is a sincere view with a reasonable basis to support it. Transferring school records, in accordance with state law requirements, of students leaving the County system for the City system does not make the defendants accountable for the conduct of the parents and the receiving school officials. Any "zone-jumping" *among* or *between* zones in the County school system is very limited, not authorized by the defendants, includes black as well as white students, and is largely corrected through the Board's policy of requiring the receiving principal to investigate transfers within the County's system.

24. One of the purposes, and hopefully one of the results of the upgrading and enhancement of Talladega County Training School grades 7-12 is to stop the loss of white students by providing attractive physical facilities and curriculum changes at Talladega County Training School.

Summary

In this case plaintiffs have endeavored to establish that several decisions and practices of defendants violate or violated (a) the Equal Protection Clause of the Fourteenth Amendment, (b) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*, and (c) regulations promulgated to effectuate Title VI, 34 C.F.R. §100 *et seq.*, and particularly 34 C.F.R. § 100.3. They have failed in this

endeavor. With regard to all such claims, plaintiffs have failed to establish by a preponderance of the evidence that any of the challenged decisions and practices were tainted by a racially discriminatory animus. A discriminatory intent being a prerequisite to recovery under the constitutional claim and the statutory claim, defendants are entitled to a judgment in their favor on these claims. Also, to the extent that plaintiffs sought to prevail on disparate *treatment* theories under their claims predicated on regulations to effectuate Title VI, defendants are entitled to a judgment in their favor. With regard to the claims based on disparate *impact* theories under the regulations to effectuate Title VI, plaintiffs have failed to establish by a preponderance of the evidence that any of the challenged decisions and practices violated the regulations or otherwise had a disparate impact on blacks. Thus plaintiffs have not established even a prima facie case under the regulations. Even though defendants had no burden of proof, they have articulated and established by clear and convincing evidence substantial, legitimate, non-discriminatory reasons for the decisions and practices in question. Since the court has earlier held that the decisions and practices of defendants did not result in a disparate impact on plaintiffs, it goes without saying that plaintiffs also failed to establish an alternative to the challenged decisions and practices which alternative would have resulted in less of a disparate impact.

A separate final judgment in favor of defendants will be entered.

DONE this 19th day of September, 1989.

/s/ James H. Hancock
UNITED STATES DISTRICT
JUDGE